

1978 Present : Weeraratne, J. and Ratwatte, J.

THAMBIAH SEEVARATNAM and TWO OTHERS, Appellants  
and  
THE ASSISTANT COMMISSIONER OF CO-OPERATIVE  
DEVELOPMENT, JAFFNA, Respondent

S. C. 600—602/76—M.C. Jaffna

*Co-operative Societies Law, No. 5 of 1972, sections 59 and 70(3)—Enforcement of award made under provisions of Co-operative Societies Ordinance (Cap. 124)—Does section 70 (3) of Law, No. 5 of 1972 apply to awards made under earlier Law—Jurisdiction of Magistrate to enforce such award—Interpretation Ordinance (Cap. 2), section 6 (3) (c).*

An award made on 16th December, 1971, under the Co-operative Societies Ordinance (Cap. 124) as amended was sought to be enforced under the provisions of section 59 of the Co-operative Societies Law, No. 5 of 1972. It was submitted that the Magistrate's Court had no jurisdiction to entertain the application to enforce this award and that the provisions of section 70(3) of Law No. 5 of 1972 did not apply to "awards" made under the earlier Law. Reliance was also placed on section 6 (3) (c) of the Interpretation Ordinance.

*Held* : That an award made under the Co-operative Societies Ordinance as amended can be enforced under section 59 of the Co-operative Societies Law, No. 5 of 1972. Section 70(3) of the new Law applies to such awards. Section 6(3) of the Interpretation Ordinance has no application in such a case and the Magistrate has jurisdiction to entertain such applications.

Case referred to :

*Kesavan Nambi v. Asst. Commissioner of Co-operative Development, S.C. Application No. 374/76—M.C. Point Pedro 13138 S.C. Mt's 24.9.76.*

**A** PPEAL from an order of the Magistrate's Court, Jaffna.

*P. Somatilakam*, for the appellants.

*Rohan Jayatilleke*, State Counsel, for the respondent.

*Cur. adv. vult.*

April 3, 1978. RATWATTE, J.

The Assistant Commissioner of Co-operative Development, Jaffna, by filing a Certificate of Award in terms of section 59 (1) (c) and section 59 (4) of the Co-operative Societies Law, No. 5 of 1972, read with section 70 (3) of the said Law, instituted proceedings in the Magistrate's Court of Jaffna for the recovery of a sum of Rs. 1,400 together with Rs. 150 being costs and interest at 6% on the principal sum of Rs. 1,250 from 17.12.1971 to 17.06.1973 (Rs. 112.50) and further interest at 9% per annum until the date of realisation. The certificate further stated that the said sum was due to be paid jointly and severally by seven defaulters who were named in the certificate. The amount due individually from each defaulter was stated against the name of each of them. The Magistrate issued summons on the defaulters. Four of the defaulters appeared and stated that they were liable. Thereupon the Magistrate ordered each of them to pay the respective amount due from him. Three of the defaulters who are the appellants in this appeal stated that they had cause to show why further proceedings for the recovery of the amount should not be taken against them.

At the inquiry, Counsel appearing for the appellants made certain submissions. Thereafter written submissions were filed on behalf of the appellants and the respondent. It was submitted on behalf of the appellants that the application to enforce the award was made on 18.07.1973 in terms of section 59 of the Co-operative Societies Law, No. 5 of 1972, which came into force from 11.10.1972. The award itself, which was sought to be enforced was made on 16.12.1971. Section 59 states that a decision or award which is sought to be enforced under that section is a decision or award made under section 58 of the Law. The award sought to be enforced in this case was an award made under the Co-operative Societies Ordinance (Chapter 124) as amended from time to time. The Co-operative Societies Ordinance was repealed by the Co-operative Societies Law, No. 5 of 1972. It was therefore submitted that this award was not made under section 58 of the new Law and it is not saved by section 70 (3). The learned Magistrate in his Order stated that section 59 (6) of the new Law precluded him "absolutely from entering into any controversy in regard to any statement made in the certificate filed". He took the view that the prohibition contained in section 59 (6) did not authorise him to examine or decide the correctness of the statement in the certificate which says that "the recovery of the amount due and its transmission to me are sought under section 59 (4) and section 59 (7) of the above Law". He therefore held that he had power only

to recover the money as a liability due and not decide the correctness of the statement that this Award or decision is enforceable. He therefore ordered that the amount be recovered from the appellants as a fine. The appellants appealed against this Order.

Learned counsel for the appellants urged before us that the award in this case which was made on 16.12.1971 was made under the Co-operative Societies Ordinance (Chapter 124) as amended by the Co-operative Societies (Amendment) Act, No. 27 of 1964. The application to enforce this award was made on 18.07.1973 under section 59 of the Co-operative Societies Law, No. 5 of 1972. He submitted that as section 59 specifically refers only to a decision or an award made under section 58 of the same Law, the Magistrate's Court had no jurisdiction to entertain the application to enforce this award. He contended that the award is not saved by the provision of section 70 (3) of the new Law as "Awards" have not been included in section 70 (3). He further contended that awards made under the old Law were not preserved, because of the provisions of section 6 (3) (c) of the Interpretation Ordinance (Chapter 2). He therefore submitted that the award of 16.12.1971 could have been enforced in terms of Chapter 124 as amended by Act No. 27 of 1964 by virtue of section 6 (3) (c) of the Interpretation Ordinance.

Section 70(3) of the Co-operative Societies Law reads as follows:—

"All appointments and orders made, notifications and notices issued, and suits and other proceedings instituted or deemed to have been made, issued or instituted and all disputes that have arisen under any enactment repealed by this Law, shall, so far as may be, be deemed to have been respectively made, issued and instituted and to have arisen under this Law".

Learned counsel for the appellants submitted that an award is not an "order" and further that when this section provided for determining suits and proceedings instituted under the old Law as suits and proceedings under the new Law the legislature was contemplating suits and proceedings pending and not suits and proceedings that were terminated by the making of an award; and similarly that when the section referred to "disputes", it contemplated pending disputes. It was contended that if the legislature intended to make express provision for awards it would have made express provision for it in the section, just as it has made express provision for orders, notices, etc.

This same point had been raised recently in the case of *Kesavan Nambi v. Assistant Commissioner of Co-operative Development, Jaffna and another*—S. C. Application No. 374/76—Application for Revision in M. C. Point Pedro Case No. 13138: S. C. Minutes of 24.09.1976. In that case too an application was filed under section 59 (1) (c) and section 59 (4) of the Co-operative Societies Law to enforce an award made in 1966 under the old Law. In dealing with this point, Rajaratnam, J. stated as follows:—

“ We are inclined to give a liberal interpretation to s.70 (3) which in our view is an all embracing section to keep alive and continue all that had been done or ordered under the old Law and preserving all the rights and liabilities of the respective societies. We also hold the view that our interpretation must follow the rule “*ut res magis valeat quam pereat*”. We are not impressed by the submission that the award made is not an order in as much as a decision of the Registrar either in the first instance or in Appeal. Section 70 (3) keeps alive all appointments and all orders made or deemed to have been made. It keeps alive all notifications and notices issued or deemed to have been issued. It keeps alive all suits and other proceedings instituted or deemed to have been instituted. It keeps alive all disputes that have arisen. It states all these appointments, orders, notices, notifications, proceedings, suits or disputes in existence under any repealed law shall, so far as possible may be, be deemed to have been respectively made under the Law No. 5 of 1972. Moreover an ‘order’ as defined in the Shorter Oxford Dictionary (3rd Ed.) includes the meaning “an authoritative direction or a decision of a Judge.” An award of an Arbitrator under the Act cannot be said not to have that meaning.

It is our view, that all awards made before the coming into force of the said Law under the relevant repealed Act shall so far as may be, be deemed to have been made under the new Law. Moreover the dispute which was referred to the Arbitrator and the proceedings before the Arbitrator as well will be deemed to have arisen and instituted under the new Law. The Legislature by the new Law caused the Co-operatives and the Department to lose nothing and shed nothing but everything so to say was clothed anew by the Act No. 5 of 1972.”

Rajaratnam, J. finally held that section 70 (3) :—

“after the Law No. 5 of 1972 came into operation, brought all the sections in the new Law into play and when the awards made under the repealed laws came to be enforced the provisions of the new Law applied.”

I respectfully agree with his judgment. Learned counsel for the appellants submitted that Rajaratnam, J. has not considered the provisions of section 6 (3) (c) of the Interpretation Ordinance and he invited us to consider Rajaratnam, J.'s judgment in that light. As stated earlier I agree with Rajaratnam, J. that an award comes within the meaning of the term 'Order' in section 70 (3) of the new Law and I am therefore of the view that specific provision has been made in the new Law regarding the enforcement of awards made under the old Law; that being so, section 6 (3) (c) of the Interpretation Ordinance will not apply as that section would apply only in cases where there is no specific provision made in the repealing Act.

For these reasons I hold that the Magistrate's Court had jurisdiction to entertain this application. I would therefore affirm the order of the learned Magistrate directing that the amounts due from the appellants be recovered as a fine and dismiss the Appeal. I make no order as to costs.

WEERARATNE, J.—I agree.

*Appeals dismissed.*

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